

**REMARKS**

In the above-mentioned Office Action, all of the pending claims, claims 1, 5-15, and 18-24, were rejected. Claims 1, 5-14, and 21-24 were rejected under Section 103(a) over Eglen (US Publication number 2003/0023505). The Examiner further rejected claims 1, 5-15, 18-24 under Section 101 for being directed to non-statutory subject matter.

Responsive to the rejections of the claims, the independent claims, claims 1 and 15, have been amended in manners, as set forth herein, believed to overcome the Section 101 rejection, increase the clarity of the claims, and better distinguish the invention of the present application over the cited reference and also to recite statutory subject matter.

Entry of the proposed amendments is respectfully requested to place the claims in better form for consideration on appeal.

In claim 1, the recitation of the content creator database is amended, now to state that the database is configured to form a listing formed of entries. The entries are stated to identify content creators together with historical indicia. The historical indicia is stated to comprise a categorized value. The categorized value is stated to identify a category group into which a respective content creator is categorized. And, the category group into which the content creator is categorized is stated to be dependent upon a sales history of other content files authored by the respective content creator. Method claim 15 is analogously amended.

The amendments to claims 1 and 15 are supported in the disclosure, e.g., on page 11, lines 7-15, which state that the content creator database includes a listing formed of entries that identify content creators, together with historical indicia that identifies a sales history, a value comprising a categorical value in which the content creator is categorized into a selected group depending upon the sales history of the content creator.

The Applicants assert that Eglen fails to disclose the database, as now-recited, nor an initial price indicia associator or price indicia adjustor that configured initially price and to adjust, respectively, content files. Accordingly, the Applicants traverse the Examiner's rejection of the claims under Section 103(a).

In the Examiner's response to the Applicants' earlier response, the Examiner indicated that Eglen discloses categorization for the reason that paragraph [0052] states that users of the dynamic pricing system 102 can be further categorized into two type of users, mainly: content suppliers (or artists) and content consumers (or customers). The Examiner further noted paragraph [0064], which states that categorical information, such as an album name and/ or type of music, can be stored in a field 326.

The Applicants assert, however, the categorization disclosed in Eglen differs with the recitations of the independent claims, particularly as now-presented. That is to say, the categorization is merely that of the two types of users of a dynamic pricing system, mainly, those that supply content and those that consume the supplied content. In contrast, the claims, as now-presented, recite that a historical indicia comprises a categorized value that identifies a category group into which a content creator is categorized. The recitation not only is not of a content-supplier verses content-consumer categorization, but, also, the categorization disclosed in Eglen does not pertain to a category of sales histories of content creator, all as now-recited in the independent claims.

The Applicants assert that the use of the categorized value associated with a content creator, based upon the content creator's sales history provides an advantage over the prior art, such as that represented by Eglen. That is to say, the association of a content creator with a category, based upon a sales history, permits the associated content quickly to be priced with an initial price rather than requiring a more complex initial-price calculation to be performed.

For these reasons, therefore, the Applicants assert that independent claims 1 and 15, as now-presented, is not obvious over Eglen.

The Applicants further assert that, as now- presented, the claims recites statutory subject matter, in conformity with Section 101 USC. And, the Applicants respectfully traverse the rejection of the claims under Section 101. Specifically, the Applicants assert that, as now- presented, the claims satisfy one of the tests for statutory subject matter articulated by the CAFC in *In re Bilski* (CAFC, October 30, 2008). *In re Bilski* states that a claimed process is patent- eligible under Section 101 if: 1) it is tied to a particular machine or apparatus, or 2) it transforms a particular article into a different state or thing. Claim 15, as now-presented, recites a method that performs the associating, initial pricing, and adjusting of the initial price at a content distribution facility. That is to say, claim 15 recites a method tied to a particular machine or apparatus. And, for this reason, the Applicant assert that claim 15 and 18-24, recite statutory subject matter. The Applicants further assert, as now-presented, that apparatus claims 1 and 5- 14 recite statutory subject matter. As now-present, the claims do not merely recite only logic or software, i.e., engine single software application, interface, for a computer. Instead, a content creator database is recited to be configured to form a listing, an initial price indicia associator is stated to be configured to initially price content files, and the price indicia adjustor is recited to be configured to adjust the initial price indicia. Each of these recited elements of the apparatus recites structural elements that are structurally interrelated. For instance, the initial price indicia associator is stated to be adapted to receive content indicia stored at the content creator database. And, the price indicia adjustor is stated to be adapted to receive indications of initial price indicia that the initial price indicia associator associates with the content files. Thus, the Applicants assert that the recited elements are, in fact, structurally interrelated as well as reciting structure, all in conformity with Section 101.

The remaining dependent claims, which include all of the recitations of their respective parent claims, these claims are believed to be patentably distinguishable over Eglen for the same reasons as those given with respect to their parent claims.

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In light of the foregoing, therefore, independent claims 1 and 15 and the remaining dependent claims dependent thereon are believed to be in condition for allowance. Accordingly, reexamination and reconsideration for allowance of the claims is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

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